

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 487 of 2019**

- Manendra Yadav, S/o Radheyshyam Yadav, Aged About 25 Years, R/o Irrigation Colony Akaltara, (Wrongly Mentioned As Vichai) Police Station Akaltara, District – Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station - Civil Lines, Bilaspur, District - Bilaspur, Chhattisgarh

---- Respondent

CRA No. 613 of 2019

- Awadesh Dubey, S/o Tulesh Dubey, Aged About 26 Years, R/o Near Kanya Shala, Akaltara, Police Station Akaltara, Police Station Akaltara, District Janjgir Champa, Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station Civil Line, District Bilaspur, Chhattisgarh

---- Respondent

CRA No. 614 of 2019

- Sanjay Dewangan, S/o Teekaram Dewangan, Aged About 26 Years, R/o Purani Basti, Janjgir, Police Station Janjgir, District Janjgir Champa, Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh, Through Station House Officer, Police Station Civil Line, District Bilaspur, Chhattisgarh

---- Respondent

CRA No. 765 of 2019

- Satvinder Singh @ Bittu, S/o Gurudeep Singh, Aged About 47 Years, R/o Simble Camp Tekri, Police Station Meera Saheb, District Jammu, Jammu and Kashmir

---- Petitioner

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Civil Line, District Bilaspur, Chhattisgarh

---- Respondents

For Appellants

Ms. Saumya Sharma and Ms. Sareena Khan, Advocates

For Respondent-State

Shri Shailendra Dubey, Addl. AG and Shri Santosh Bharat, PL

Hon'ble Justice Shri Prashant Kumar Mishra

Hon'ble Justice Shri Gautam Chourdiya

Order On Board By Prashant Kumar Mishra J.

12/07/2019

1. These are four appeals under Section 21 (4) of the National Investigation Agency Act, 2008 (for short 'NIA Act, 2008') read with Section 378 (4) of CrPC against the order passed by the Trial Court (NIA Court) rejecting their application for grant of bail under Section 439 of CrPC.
2. The appellants have been arrested on different dates in April and May, 2017 for having allegedly committed offence under Sections 121, 122, 123, 120-B and 420 read with Section 34 of IPC on the allegation that they were found involved in terror funding.
3. Learned counsel for the appellants would submit that there is no

evidence against them prima facie connecting them with the alleged offence. Even if bank accounts and ATM's of some of the accused have been used for withdrawing amounts at different locations and those amounts have been used for terror funding, the appellants being not aware of such fact, they being innocent, they are entitled to be released on bail in view of the law laid down by the Supreme Court in the matters of **Izharul Haq Abdul Hamid Shaikh and another vs State of Gujarat**¹ and **Yakub Abdul Razak Memon vs State of Maharashtra**². It is also argued that under Section 6 of the NIA Act, 2008, the State Government has to obtain prior permission from the NIA for proceeding ahead with the investigation, however, the same having not been complied with, there is serious lacuna in the prosecution case, therefore, for this reason also, the appellants deserve to be released on bail. It is also submitted that they are in jail for more than 2 years and the trial may take some time, therefore, for this reason also, they are entitled to be released on bail.

4. Per contra, learned State counsel would oppose the prayer for grant of bail on submission that the appellants have close link with main accused Abdul Zabbar, who happens to be an ISI agent, therefore, the appellants having allowed themselves to be misused, it is presumed that they had knowledge of their bank accounts being used for terror funding.
5. We have also scrutinized the case diary.
6. The material available in the case diary would reveal that co-accused

1 (2009) 5 SCC 283

2 (2013) 13 SCC 1

Abdul Zabbar, an ISI agent, has close links with the persons involved in terrorist activities in Jammu Kashmir and provides funds to the stone pelters. Co-accused Satvinder Singh, resident of Camp Tekri, Police Station Meera Saheb, District Jammu and one Tahsem Lal were in contact with Abdul Zabbar. When Satvinder Singh was arrested by the Jammu Police on 10.11.2016, he revealed that he has used Rajeev @ Rajjan Tiwari in arranging funds, which were distributed to the stone pelters. When Rajeev @ Rajjan Tiwari was interrogated, he revealed to the Police that his relative Awadesh Dubey and his friends Sanjay Dewangan, Manendra Yadav and Mahendra Yadav have opened bank accounts on his asking and they later on handed over their ATM Cards for being used by Rajjan Tiwari and others as and when he was directed by Satvinder Singh and/or Abdul Zabbar for drawing funds for stone pelters. Withdrawals were made from the accounts of these persons at different locations in the country including places at Jammu Kashmir, Punjab, Delhi, Assam, U.P. etc.

7. The accused persons had thus opened the bank accounts with full knowledge that the same will be used by some other persons, therefore, it was their duty to have checked up the purpose and object of using the ATM Cards belonging to them by some other persons across the country. They cannot wriggle out of the allegations at this stage only on submission that they had no knowledge that the funds lying in their bank accounts were used for terror funding. This plea of the appellants is very easy to be made but when it is seen in conspectus along with the materials available in the case diary, it appears, they allowed their bank accounts for almost 2 years for being

used for terror funding. It is strange as to how the appellants were not aware of deposit of huge funds, which is disproportionate to their source of income, in their bank accounts and likewise they were not aware as to withdrawal from their accounts at different locations across the country.

8. In the matter before the Supreme Court, the persons arrested were labourers, as is referred in para 17 in **Izharul Haq Abdul Hamid Shaikh and another** (supra). Similarly, the argument that there is no compliance of Section 6 of the NIA Act, 2008 does not appeal to us for the reason that what is provided under Section 6 is sending of information of commission of schedule offence by the State Govt. to the NIA. On receipt of such information, the NIA may or may not conduct the investigation itself. Sub-section (7) of Section 6 would be relevant for our purpose, which provides that till the agency (NIA) takes up the investigation of the case, it shall be the duty of the Officer-in-Charge of the Police to continue the investigation. Thus, the State Police is obliged to conduct investigation without waiting for a formal communication from the NIA as to whether or not it shall proceed to take over the investigation. The provision has been made for obvious reasons that for non conduct of investigation, evidence of crime may not disappear. It is also for the reason that prompt investigation improves and strengthens the case of the prosecution. In addition to this, Section 10 of the NIA Act, 2008 would further provide that save as otherwise provided in the Act, nothing contained in this Act shall affect the powers of the State Government to investigate and prosecute any schedule offence or other offences under any law for the time being in

force. Thus, sub-section (7) of Section 6 read with Section 10 fully authorizes the State Government to continue to investigate the crime relating to schedule offences without waiting for a formal communication from the NIA. The appellants have also argued that the accused being in jail for more than 2 years, they are entitled for bail due to length of pre trial detention, however, some of the offences alleged against the appellants carry punishment of imprisonment for life or death. Therefore, considering the nature of offence against the sovereignty and integrity of the country and the manner in which the appellants have allowed themselves to be used for terror funding, we are not inclined to allow the appeals to release the appellants on bail.

9. Accordingly, all the appeals being devoid of substance are dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Gautam Chourdiya
Judge

Nirala